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HIGHWAY SAFETY AND THE COURTS
EDITORIAL

THE IOWA LAY OPINION SURVEY
WILLIAM F. RILEY

SILVER ANNIVERSARY OF JUDICIAL COUNCILS
GLENN R. WINTERS

THE PROPOSED MISSOURI EVIDENCE CODE
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THE CHARGE TO THE JURY
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AMERICAN JUDICATURE SOCIETY
Ann Arbor, Michigan

THE AMERICAN JUDICATURE SOCIETY

To Promote the Efficient Administration of Justice

Founded in 1913 by Herbert Lincoln Harley

Hutchins Hall

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Vol. 33, No. 2 GLENN R. WINTERS, Editor August, 1949

Highway Safety and the Courts

MORE COSTLY than the Marshall Plan is the ever-increasing accident toll in this country. Every twenty-five seconds someone is injured in a motor vehicle traffic accident, every eighteen minutes someone is killed, and property damage adds up to $170,000 every hour, day and night.

In recognition of the urgent national importance of reducing this frightful and avoidable toll of blood and money, President Truman has sponsored the President's Highway Safety Conference, the 1949 session of which was held in Washington the first three days of June. There high state and municipal officials and leading authorities in all phases of highway accident prevention from all parts of the United States met to discuss plans and map strategy for an unprecedented fight upon America's peacetime equivalent of the Blitzkrieg.

The traffic accident toll is mostly avoidable because very little of it would take place if proper traffic laws were properly observed by the motoring public. Thus the legal and enforcement aspects of the problem are of paramount importance. At the Conference these were grouped under the Committee on Enforcement, headed by James R. Morford, chairman of the American Bar Association House of Delegates, and especially the Subcommittee on Courts, of which James P. Economos, secretary of the A. B. A. Traffic Court Committee, is secretary.

Copies of the report and recommendations of the Committee on Enforcement and of the Action Program based upon those and other recommendations, will be published in the near future. They will have wide circulation among traffic court judges, prosecutors, justices of the peace, interested laymen and lawyers. The following recommendations are from the Action Program:

(a) Specially qualified prosecutors should be provided in all courts handling traffic cases.

(b) Prosecutors should vigilantly follow procedures assuring proper pres-

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The idea that lawyers should unite to promote a more efficient administration of justice was first proposed by Herbert Lincoln Harley, who devoted the best years of his life to this form of service.

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entation of cases and preventing improper disposition or "fix" of traffic cases.

(c) Courts of record should be provided for hearing of traffic cases.

(d) Qualified judges are needed to handle traffic cases, and all traffic courts, rural and urban, should be supervised on a state-wide basis by the chief justice of the highest appellate court of the state.

(e) Improvements for betterment of traffic court administration recommended by the National Committee on Traffic Law Enforcement should be adopted by all jurisdictions.

(f) The word "police" should be eliminated from the name of the courts handling traffic cases, and more appropriate titles substituted.

(g) Dignified and impressive court room facilities should be provided by all cities, counties and states.

(h) A high degree of cooperation should be developed and maintained between traffic courts and driver-licensing authorities.

Anyone desiring copies of these reports may obtain them by writing to the President's Highway Safety Conference, Federal Works Building, Washington 25, D. C.

ASSOCIATE JUSTICE JULIAN P. ALEXANDER of the Supreme Court of Mississippi will address the annual meeting luncheon of the American Judicature Society in St. Louis, September 7, 1949. An unforeseen change in plans has made it impossible for Dean Roscoe Pound, previously announced as the speaker, to be in St. Louis at that time. The meeting will be in the Jefferson Hotel, and tickets will be on sale at American Bar Association headquarters. The program will be followed by the annual business meeting of the members and a brief meeting of the directors.

BAR ASSOCIATION COMMITTEE REPORTS usually make prosy reading, but frequently they are interesting and important. The *Hennepin Lawyer*, monthly publication of the Hennepin County Bar Association, Minneapolis, encourages its readers to examine the committee reports by giving them a headline with some hint of their contents. The report of the Program Committee, for example, in the June *Hennepin Lawyer* is headed "Programs for Coming Year Already Planned." "Appearances Before Commission Opposed" is the heading for the report of the Unauthorized Practice Committee, and the membership report is blazoned with "Membership Committee Reports Year that Tops All Previous Records." If editors of other bar association reports made similar efforts to induce readers to peruse them, the readers, the hard-working committee members and the publication all would be rewarded.

What is it that we are actually seeking in judicial reform? What the litigant really wants is so simple and so entirely reasonable that one wonders why it has not long since been achieved everywhere: (1) a prompt and efficient trial of his case, (2) at reasonable cost, (3) in which he is represented by a competent attorney, (4) before an impartial and experienced judge in the trial court, (5) with a jury that is a representative cross-section of the honest and intelligent citizenry, and (6) with a right to review the trial court's determination before an impartial and experienced appellate tribunal which will decide his appeal promptly and efficiently.—*Arthur T. Vanderbilt*

He was a veteran who had seen a lot of action. He returned to New York and to his wife and young baby.

Dissatisfied with his job, he went one day to his union to see about getting something better. The man he wanted to speak to was out, so he decided to wait. Only a girl was in the office, counting money in a cash register. Suddenly he walked over to her, held her up, took the money and left.

He got onto the subway, where he sat trembling with horror. Reflecting on the terrible thing he had done, he got out, telephoned his wife, told her, and went to the police and gave himself up.

Meanwhile a man hunt was on. The robbery had involved a considerable sum, and known criminals were being sought. Had this veteran not given himself up he would never have been suspected and probably would never have been apprehended. Now, it was likely that he would receive a considerable sentence for the crime.

Being without funds to pay counsel, his case was assigned to one of the Legal Aid Society's lawyers, who immediately realized that the defendant was not a criminal, but rather a subject for psychiatric treatment. A full investigation was made of the man's employment history, together with his superb war record, and he was advised to appear before the grand jury to tell his own story. The lawyer's judgment was upheld, and the grand jury dismissed the complaint.

Subsequently, the Society assisted in arranging for psychiatric treatment which the veteran had needed for a long time. At present he is recovering.—*"Out of the Legal Aid Files," The Legal Aid Review.*

The major problem of human society is to combine that degree of liberty without which law is tyranny with that degree of law without which liberty becomes license.—*Heraclitus of Ephesus*

There are those who observe that the quality of our bench, with all its limitations, is probably better than we deserve. There has never been any great amount of willful and deliberate misconduct on the part of state judges. Bribery has been most rare. Politically selected judges who had been active in politics and wholly discreet in their political connections prior to their election to trial courts, have, after election, steadily improved in all of the qualifications that mark the good judge. There is much wisdom, and some humor, in the comment of the late Chief Justice White who, in speaking of the American judiciary, said, "As I look at the subject and contemplate the varied methods by which judges have been selected, the frequent shortness of their tenure, the almost usual inadequacy of their compensation—the thought cannot be resisted that a result so remarkable has been brought about by the dispensation of a merciful providence." But it is hardly wise to rest securely in the hope of a miraculous intervention or to fail to accept the pretty certain truth that our judges are likely to be prepared, and their quality likely to be determined, by the system that makes them.—*Raymond Moley*

When enlisted in a good cause never surrender, for you can never tell what morning reenforcements in flashing armor will come marching over the hilltop. —*Jan Smuts.*

The Lay Opinion Survey of Iowa Lawyers, Courts and Laws

By WILLIAM F. RILEY

MORE IOWANS find something they like about lawyers than find something they dislike. A minority—but a fairly stable minority—likes "nothing about lawyers." If a son wanted to study law, most Iowa parents would approve. More Iowa people remember movies showing lawyers and judges as good citizens than as bad citizens. Iowa lawyers are less well known in their communities than doctors or dentists, and more people believe lawyers "charge too much" than these other professions.

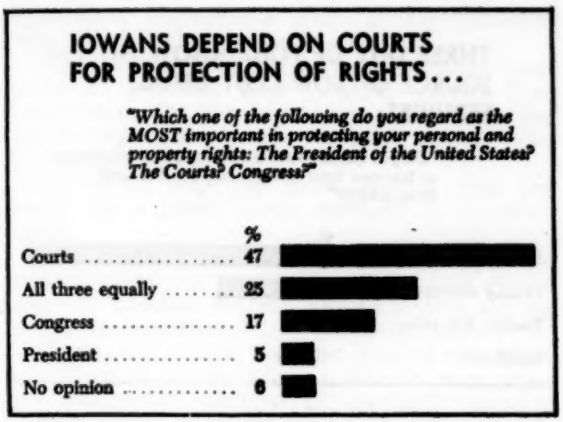
These are a few of the more significant findings from a survey of lay opinion of Iowa lawyers, courts and laws recently completed under the auspices of the Iowa State Bar Association. The many inquiries from all parts of the country for more information about it indicate that questions about how the legal profession stands in the opinion of the public are being asked everywhere, and that the answers obtained in Iowa are of widespread interest to the bench and bar. This account of the survey, its background, planning and execution, and the action program adopted by the Association as a result of it, is presented to satisfy that general desire for information, and to share as far as possible the benefits of the survey with our brethren of the bar in other states.

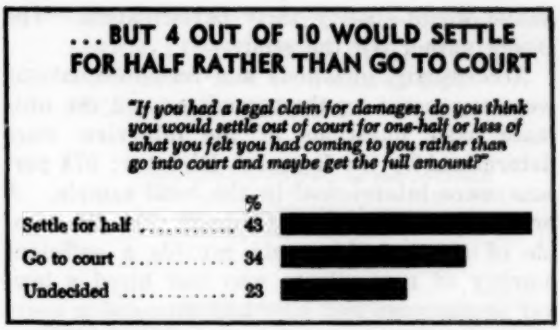
The Iowa State Bar Association adopted a by-law at its annual meeting at Cedar Rapids, Iowa, June 14, 1947, creating a Committee on Public Relations as a standing committee, to be composed of six members serving for two years each, with the president and secretary ex officio members of the committee. It was made the duty of the committee "to study and promote ways and means to improve the relations between the public and the legal profession; to institute a program of public education on legal problems; and to report its recommendations to the Board of Governors for their approval." This by-law was adopted and the committee created on the recommendation of a special committee which had investigated the desirability of attempting a definite program in the field of public relations.

The committee, composed of R. C. Brown, Forest City; Roscoe S. Jones, Atlantic; G. A. Minnich, Carroll; W. O. Weaver, Wapello; Vincent Starzinger and Wm. F. Riley, Chairman, both of Des Moines, first met in August, 1947, "to study and promote ways and means." Three of the members, Brown, Minnich and Weaver, had served on the special committee. All were of the opinion that any program to be adopted must be permanent, must reach the individual member of the bar, and to be successful, must have the sympathetic understanding and cooperation of each member. Lacking technical training and the means with which to employ technically-trained personnel, it seemed advisable first to turn to the members of the bar for their suggestions.

Accordingly, a questionnaire was prepared and sent to each of the 2700 members. It was on one sheet, asked their expressions as to what they believed to be the basic public relations problems, the best approach or action to correct the problems suggested, the specific means believed to be helpful, and asked for separate comment as to matters not believed to be covered by the specific questions asked. The specific questions were limited to listed factors which the lawyers were asked to mark in order of importance, if they believed them to be detrimental to the existing relations between the public and the profession. Other questions asked them to indicate in the order

WILLIAM F. RILEY is a member of the Des Moines bar, president of the Iowa State Bar Association, and chairman of its Committee on Public Relations. He also is a member of the American Bar Association Committee on Public Relations. Copies of the booklet "Lay Opinion of Iowa Lawyers, Courts and Laws" are available at fifty cents each from Edward H. Jones, Secretary, Iowa State Bar Association, 1101 Fleming Building, Des Moines 9, Iowa.





of their importance which of several listed methods they believed might provide an approach to better relationships between the public and the profession.

Instead of using the mails, the questionnaires were forwarded to individual lawyers selected in each of the 99 counties who were asked to attend to personal distribution of the questionnaires to each lawyer, with the request that they answer and mail them in a self-addressed envelope to the committee. Five hundred answers were received. In most instances, in addition to the information requested on the printed page, there were extended observations written on the reverse side. In dozens of instances these were supplemented by letters. The entire response indicated, not only an interest in the program, but eagerness to see it put into operation. The answers were frank, analytical, constructive and disclosed satisfaction of the bar that a program of this type was being undertaken. The great majority stressed their belief that the primary undertaking should be within the bar itself; that our own members should be particularly instructed in the fields of public relations and that our own house should be put in order.

Members stressed the importance of improved standards of admissions, not only to the bar and to the association, but to law schools, and urged that character of the applicant be more strongly weighed as a factor in these admissions.

After the committee had studied the answers, they were permitted, with the aid of funds furnished by the Iowa State Bar Foundation, to employ the services of a professional analyst who distilled from answers to the questionnaires, in more condensed form, substantially the same essence that the members had found.

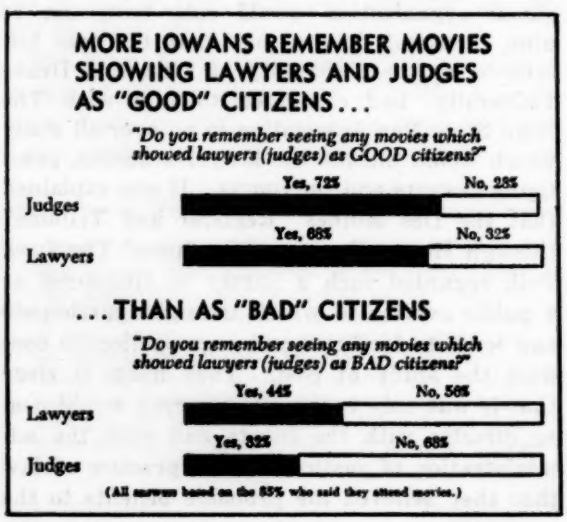
The committee recirculated the questionnaires and received in excess of 200 additional answers. These fell into the same relative patterns as did the original answers, causing the committee to infer that answers from the total membership would not change materially the results already obtained. It was believed, too, that those who had answered were those most interested in the work of the bar and in the particular program and reflected the views of men who had given most thoughtful consideration to the problems inquired about.

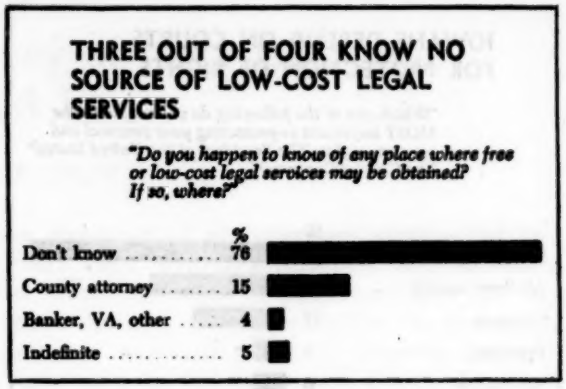
A summarized report of this study was made to the Board of Governors which was told that the committee had not yet formulated any program nor did it believe that any soundly-planned, long-time, comprehensive program, either of public relations or of legal education, could be formulated until a survey of public opinion would have been attempted. It was explained that such a survey by a professional organization would cost from six to nine thousand dollars, but that the two law schools, at the University of Iowa and Drake University, had consented to join with The Iowa State Bar Association in an over-all study which would include the lawyer students, practicing lawyers and the courts. It was explained that the Des Moines "Register and Tribune" through Henry Kroeger, Director of The Iowa Poll, regarded such a survey so sponsored as a public service in which it might participate and lend its facilities and organization to conduct the study at cost. They made it clear that it was only because the survey would deal so directly with the courts and with the administration of justice and the practice of law that they believed the probable benefits to the

public would justify their participation. The Board authorized the study.

Accordingly, questions and recommendations were suggested by the committee and the ultimate basic questions of the interview were determined by the Research Director; 978 persons were interviewed in the total sample. A presurvey testing had indicated that the sample of about 1,000 would provide a sufficient number of respondents who had hired a lawyer in the past and who had attended a court while it was in session. There were 496, or 51 percent, men interviewed, and 482, or 49 percent, women interviewed. Of these, 45 percent were residents of cities, 20 percent of towns and 35 percent on farms. Attention was paid to age and economic brackets, to education, marital status, occupation, farm ownership and telephone ownership. The "quota sample" method was used, and the survey was conducted on the same cross section which is used by The Iowa Poll, a regular service of the Des Moines "Register and Tribune."

The report of this survey was made to the committee with a comprehensive analysis of the answers in a series of tables comprising 42 pages. It was the opinion of the committee that although the report was comprehensive and at the same time sufficiently detailed to allow the interested reader to understand its results, it would be of greater value in the hands of the busy lawyer if it could be reduced to convenient booklet size, carrying the tables on one page and on the other facing page, in narrative form, the information contained in the report of the survey. Fortunately, a man with broad experience in rewriting volunteered to undertake the task. The report of the survey, as rewritten, is contained in a booklet entitled, "Lay Opinion of Iowa Lawyers, Courts and Laws." Like the original report, it is copyrighted by The Iowa State Bar Association. It is of pocket size, consisting of 39 pages and tells the story of the survey.





The statements in the opening paragraph of this article are the first five of the sixteen "Findings in Brief" in which the results of the Survey are summarized. Following are the remainder:

"The forty percent who have hired lawyers in the past were satisfied with their services. However, one out of five of this group feel they were 'charged too much.'

"Lawyers were selected primarily on the basis of 'knew him before' or by a friend's recommendation. While most agree that the age of the lawyer made no difference in selection, the older lawyer has a slight edge over young lawyers.

"Principal competition for lawyers' services for—

—filling income tax returns are tax collectors and bankers

—drawing leases and deeds are real estate dealers and bankers

—drawing up wills are bankers

—lawsuits are almost exclusively restricted to lawyers.

"Experience, better qualifications and the guarantee of legality are the principal reasons why lawyers are selected. Bankers' strong points include their handling of other business and close friendship.

"Both Iowa courts and Iowa laws are believed to be about as good as they should be, with 'delays' mentioned as the principal objection to courts and enforcement problems to Iowa laws.

"Over half of Iowans have had courtroom

experience, understood most of the proceedings, but felt they lasted too long.

"The Iowans feel courts are a greater protector of personal and property rights than Congress or the President, but more than four out of ten would 'settle for half' rather than go to court.

"Principal way for both lawyers and the courts to improve their services is to avoid delays.

"While a majority would not want entrance requirements for law schools reduced below those of medical schools, they are less willing to see the number of law students limited.

"Three out of ten have no idea of the years of college required before a lawyer may practice. Likewise, two out of ten have 'no idea' of an average lawyer's annual income. $6,474 was the estimate of those expressing an opinion.

"A marked ignorance of low-cost or free legal services exist, with three out of four knowing no source of such services.

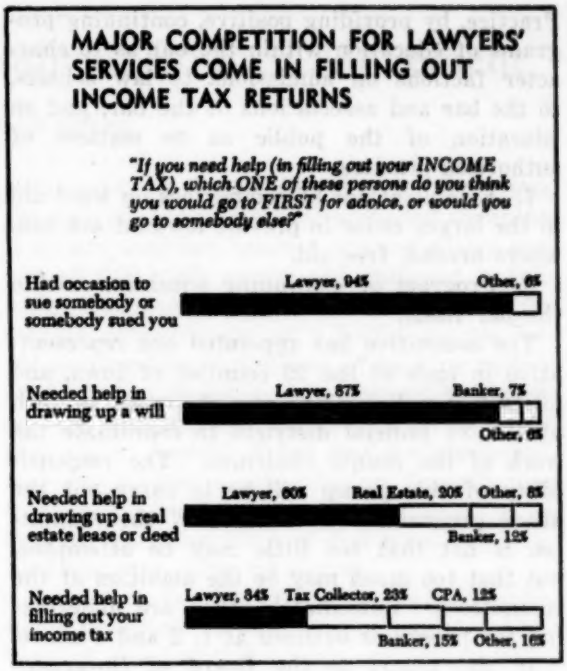
"Throughout the survey a group of dissidents was found who were unfavorable to lawyers on most questions. To a great extent, however, these were people with grade-school educations, lacking in experience with either lawyers or courts."

Most of these findings are depicted in the booklet in chart or graph form, and at the bottom of each page of text are quotations taken from the answers to the questionaires circulated among the bar. Each member of the bar has received a copy of this booklet. Copies likewise have been sent to secretaries of bar associations throughout the country. Only recently the Public Relations Committee of the American Bar Association purchased additional copies for use in connection with its publication "AmBar." The foreword of the booklet expresses the appreciation of the committee for assistance it has received from others.

The entire project could not have been undertaken without the financial support of The Iowa State Bar Foundation, whose president, Mr. Burt J. Thompson, long active in the American Bar Association, gave enthusiastic support and encouragement to the committee.

After the report of the survey and the answers of the lawyers to the questionnaires had been studied, the committee reported its recommendations to the Board of Governors, which authorized a long-time program substantially as follows:

1. The immediate organization of the few counties without local bar associations.



2. Preparation and distribution through county bar associations of educational pamphlets on wills, home ownership (including joint tenancy, title examination, building contracts, mechanic's liens and leases), duties and responsibilities of jurors, and other appropriate subjects.

3. Organization of speakers' panels or bureaus to provide speakers on appropriate subjects of general interest to luncheon and other organized groups.

4. The initiation of educational programs with school boards to provide speakers for a regular course in junior and senior high school groups on (a) primary course in government, showing direct relation of students to local, state and national government, (b) place of courts in the administration of justice and their relation to it, (c) law enforcement, teaching respect not fear of law, (d) kindred subjects such as home ownership, traffic law observance, etc., (e) necessity for support and encouragement to good men in public office at all levels.

5. Coordination with programs of adult education.

6. New and added functions for existing committees of the bar, particularly the Committee on Legal Education and Admissions, on Ethics and Grievances, and on Unauthorized

Practice, by providing positive, continuing programs of education within the bar as to character factions on admissions to law schools, to the bar and associations of the bar, and on education of the public as to matters of authorized practice.

7. Establishment of committees on legal aid in the larger cities to provide low-cost aid and, where needed, free aid.

8. Program of continuing education within the bar itself.

The committee has appointed one representative in each of the 99 counties of Iowa, and ultimately will appoint one chairman in each of the 21 judicial districts to coordinate the work of the county chairmen. The responsibility of this group will be to carry out the above program. The concern of the committee is not that too little may be attempted, but that too much may be the ambition of the committees. Immediately, they are undertaking the programs outlined at 1, 2 and 4 above.

In the report to the Board of Governors recommending the above program, the committee made the following observations which may well conclude this recital:

"In the program above, we have suggested activities to be undertaken by the county bar associations which will be of inestimable direct value to the citizens of their communities, and ultimately will give to the organized bar and its members the place that appropriately is theirs in the life of their county and state.

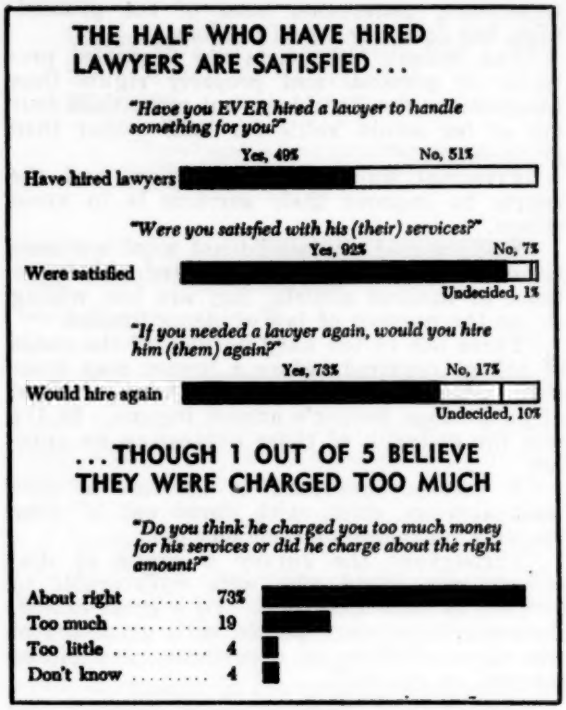
"It is our belief that whether through false modesty, or wrong understanding of their duty the members of the bar, both alone and as an organized group, have been silent when they should assert themselves. The effect we believe is that we are derelict in providing a leadership which your committee regards as a duty. This applies to our relations, not alone to the public whom we serve, but also to the court whose officers we are by our membership in the bar.

"The extent to which the public will recognize, accept and later solicit the opinion and expression of the bar will be in direct relation to the confidence which the bar will have created in the public mind. When the public believes that the primary interest of the bar is the public interest, we are confident that not only will it respond, but also will solicit the expression of the organized bar on matters of public interest.

"This whole program presupposes that we will create, not by word but by deed, not by precept but by example, in the public mind the confident belief that men of the bar have these three qualities—that they are men of high character, that they are skilled and expert in their professional field, and that the service they render will be rendered for a fee commensurate with the service.

"Until we ourselves demand these qualities of our brothers in the profession, the public will be skeptical, doubtful and unconvinced. They will turn to their detriment, to others not learned in the law, but in whom they have confidence whether or not misplaced. And the sad effect will be that if we are derelict in falling to demand these three requisite qualities we will have dishonored a noble profession and will have failed in our duty to the public.

"The program we have suggested and now if the organized bar will recognize that each lawyer, in his everyday relationship with each client, is responsible for the relations of the bar with the public. What he does or fails to do, he does for or against his client and for or against each member of this Association. We recommend that each lawyer regard himself as a member of this committee in all that he does professionally in or out of court, and in his every-day relations as a citizen of the community."



Silver Anniversary of the Judicial Council Movement

By GLENN R. WINTERS

ONE EVENING, four or five years ago, as Mrs. Winters and I sat by the fire, we were startled by that sickening sound which has become identified with our times and civilization—the screeching of brakes and tires, a resounding crash, and the tinkle of falling glass. Rushing down to the corner, we found two cars telescoped together, and while we watched the ambulance took one driver to the hospital and the police questioned the other. The explanation was simple. The driver on the cross street had driven out into the intersection without stopping for the other car, which was coming down Seventh Street too fast to stop or avoid a collision. The incident was prominently reported in the next day's paper, and within a week brand-new stop signs appeared on each side of Seventh Street at that corner to prevent its recurrence.

I was sufficiently intrigued by that sequel to the crash to write a letter to my city councilman, with carbon copy to the *Ann Arbor News*, suggesting that the same thing was likely to occur at any corner along that thoroughfare, and inquiring if it would be necessary to sacrifice two automobiles and perhaps a life or two at each corner in order to get Seventh Street properly marked. The paper printed an approving editorial and mentioned other streets where a similar situation existed. The city council referred my letter and presumably the editorial to some committee and that was the end of it.

About a year and a half ago, however, the post-war growth of population and other factors brought Ann Arbor traffic to desperate straits. Vehicles in droves of metropolitan proportions were swarming through streets still equipped only for small-town needs, and parking became an impossibility. Traffic committees of the Junior Chamber of Commerce, the city council and other interested organizations got together, made a comprehensive survey of the city's needs, and initiated a full-scale, long-range improvement program, including establishment of a half-dozen municipal parking lots, installation of parking meters on downtown street, a dozen new traffic signals at busy intersections, and a host of boulevard stop signs. Seventh Street was not overlooked, and now at last automobiles on Seventh may move along without the constant fear of an intruder bursting forth at full speed from behind the next clump of bushes.

I mention this bit of home-town history because it depicts by analogy the origin and nature of the judicial council movement. It is only natural that the chief preoccupation of the courts should be with the substantive law. Men and women living their lives and conducting their affairs in civilized society are guided and restrained by the rules of the substantive law. They come into contact with the remedial law and the machinery of justice only in the exceedingly rare instances when something goes wrong and there is a departure from observance of the law, and then only for the purpose of enforcing those substantive rights. In this role of a necessary evil, it is not surprising that judicial machinery and procedure should consistently escape the scrutiny of judges and lawyers intent upon the applicable rule of law governing the conduct and rights of the parties, except as from time to time they may be forced to it by the circumstances of the case. The tendency is overwhelming to carry on with old and familiar instrumentalities and procedures in spite of changed conditions and new needs, except as an occasional resounding smashup of justice compels correction of an outstanding defect here and there.

THE ENGLISH RULES COMMITTEE

In England a hundred years ago the machinery of justice was so out of step with the times, and the bench and bar were so blind to the fact, that a great nation-wide campaign led by the novelist Charles Dickens and others

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outside of the legal profession and carried on with determination and persistence over a long period of years finally culminated in the enactment by Parliament of the Judicature Acts of 1873 and 1875, completely reorganizing and modernizing the courts and judicial procedures of that country. Not the least important feature of that legislation was Section 75 of the Act of 1873, providing that:

"A council of the judges of the Supreme Court, of which due notice shall be given to all the said judges, shall assemble once at least in every year on such day or days as shall be fixed by the Lord Chancellor with the concurrence of the Lord Chief Justice of England, for the purpose of considering the operations of this Act and of the Rules of Court for the time being in force, and also the working of the several offices and the arrangements relative to the duties of the officers of the said courts respectively, and inquiring and examining into any defects which may appear to exist in the system of procedure of the administration of the law in the said High Court of Justice or the said Court of Appeal or in any other court . . . and they shall report annually to one of His Majesty's principal secretaries of state."[1]

That council of judges is noteworthy as the first attempt at a continuing body to make a systematic and continuing study of the operation of the courts and to recommend from time to time such changes and improvements as are necessary to maintain their efficiency.

BEGINNINGS IN AMERICA

This vital detail was missing from the great procedural reform in this country represented by the adoption and spread of the Field Code of Civil Procedure a century ago, and the first clear-cut forerunner of the present-day judicial council appeared in that state which has so many other "firsts" to its credit—Wisconsin. A group of twenty-five circuit judges met in Madison on December 29, 1913, and organized as the Board of Circuit Judges, and for twenty years thereafter they met annually during the Christmas holidays for two-day sessions during which they discussed problems related to the administration of justice and its improvement.[2] A similar body was set up in New Jersey in 1915,[3] but these organizations, and the council provided for in the Judicature Act of 1873 as well, resembled more what we speak of today as the judicial conference rather than the judicial council, in that they consisted of all the judges of the state or jurisdiction and not a small committee.

The judicial council, as distinguished from the judicial conference, may be traced directly to the Massachusetts Judicature Commission of 1919. That commission was created by the legislature—

"—to investigate the judicature of the commonwealth with a view to ascertaining whether any and what changes in the organization, rules and methods of procedure and practice of the several courts, the number and jurisdiction thereof and the number and powers of the judges therein, and of the officers connected therewith, would insure a more prompt, economical and just dispatch of judicial business."[4]

In the seventh paragraph of the Commission's final report,[5] returned two years later, is a classic statement of the need for a permanent agency to make a continuous study of the same subject-matter to which the Commission's attention had been directed, and the appendix to the report contained a draft act to provide for a judicial council,[6] a term which appears to have been coined by the Commission at that time. Two years later the Massachusetts legislature acted upon this recommendation and passed an act creating such a body,[7] but unfortunately that was too late to give Massachusetts the distinction it deserved of having the first judicial council in the country, for in the meantime organizations answering to that description had been created in three other jurisdictions. The first of all was the federal Judicial Conference of Senior Circuit Judges, in 1922,[8] and the first in a state was the Judicial Council of Ohio, created in April, 1923,[9] and bearing strong evidence of

1. Quoted in Sunderland, "The Judicial Council as an Aid to the Administration of Justice, 35 Am. Pol. Sci. Rev. 925 (1941).
2. Fowler, "Wisconsin's Board of Circuit Judges," 4 J. Am. Jud. Soc. 101 (Dec., 1920).
3. Pound, Judicial Councils and Judicial Statistics," 28 A. B. A. Journal, 98, 101 (1942).
4. General Acts, Ch. 223, approved June 10, 1919. From the Report of the Commission Appointed to Investigate the Judicature of the Commonwealth, House Document No. 597, p. 5 (1920).
5. Report, pp. 25-28.
6. Report, pp. 135-6. Text reprinted in "How Courts May Be Co-ordinated," 5 J. Am. Jud. Soc. 105 (1921).
7. Ch. 244, Acts of 1924. See "Judicial Council Created in Massachusetts," 8 J. Am. Jud. Soc. 245 (1924).
8. Fed. Stats. Ann., Supp. 1922, pp. 232-235, approved Sept. 14, 1922.
9. General Code, Sections 1697-1 to 1697-6, passed April 6, 1923. See "Ohio Adopts Judicial Council," 7 J. Am. Jud. Soc. 5 (June, 1923).

having been inspired by the Massachusetts Judicature Commission's recommendation. Also in 1923 a judicial council was established in Oregon upon the recommendation of a Commission on Law Reform, but it went out of existence after a few years.[10] This statute was based upon a model judicial council act drafted by the American Judicature Society to adapt the Massachusetts proposal to the needs of a typical state.[11]

Washington and North Carolina judicial councils were organized in 1925, and others from year to year thereafter as follows:

1926 California
1927 Kansas, Connecticut, North Dakota, Rhode Island
1928 Kentucky
1929 Idaho, Michigan, Texas, Virginia
1930 New Jersey
1931 Utah
1932 Maine
1933 New Mexico, South Dakota, West Virginia
1934 New York
1935 Indiana, Missouri
1936 Arizona, Iowa
1937 Minnesota
1939 Nebraska
1941 Arkansas
1943 Oklahoma, Tennessee
1944 Alabama
1945 Georgia, New Hampshire, Vermont.

JUDICIAL COUNCILS TODAY

During the quarter-century since 1923 there have been deaths as well as births in the list of state judicial councils. Some once deceased have lately been restored to life, while others still nominally in existence have lapsed into innocuous desuetude. In a few states, services normally expected of a judicial council are rendered to some extent by other organizations. It would be reasonably fair to say in summary that eight states today have outstanding judicial councils—California, Connecticut, Kansas, Massachusetts, Michigan, New York, Ohio and Texas. In a dozen other states judicial councils are actively at work and publishing current reports—Alabama, Indiana, Kentucky, Minnesota, New Hampshire, New Jersey, Oklahoma, South Dakota, Utah, Vermont, Washington and West Virginia. Also active, though not publishing regular reports, are the judicial councils of Arkansas, Georgia, Nebraska, North Dakota and Tennessee. In Maryland and Missouri the executive committee of the judicial conference serves as a judicial council. Service in the judicial council field is rendered in Louisiana by the Louisiana State Law Institute, in Mississippi by the judicial conference, in Pennsylvania by the Procedural Rules Committee, and in Wisconsin by the Advisory Committee on Pleading, Practice and Procedure. Defunct judicial councils in Idaho and Virginia are being restored this year and these states should be included in the active column, making a total of thirty-three states in which judicial council services are being rendered. Judicial councils in Arizona, Maine and Rhode Island are inactive, and none at all now exists in Colorado, Delaware, Florida, Illinois, Iowa, Montana, Nevada, New Mexico, North Carolina, Oregon, South Carolina and Wyoming. This latter list is likely to be reduced by one in the near future if plans afoot in Colorado materialize, and then the score will be thirty-four to fourteen.[12]

FUNCTIONS AND DUTIES

The Massachusetts Judicature Commission defined the function of the proposed judicial council as follows:

"The council shall report annually to the governor upon the work of the various branches of the judicial system. The council may also from time to time submit such suggestions as it may deem advisable for the consideration of the justices of the various courts in regard to rules of practice and procedure."[13]

The corresponding section of the statute creating the Kentucky Judicial Council reads:

"It shall be the duty of the said judicial council to study the organization, rules, methods, and procedure and practice of the judicial system of the Commonwealth of Kentucky, the work accomplished and the judicial system in general. It shall be the duty of each circuit judge to prepare and submit to the Council at its sessions a report setting forth the conditions in the circuit courts over which he presides, and of the business dispatched and pending in said courts."[14]

10. "Judicial Superintendence for Oregon," 7 J. Am. Jud. Soc. 85 (Oct., 1923).
11. Judicial Council Act, 5 J. Am. Jud. Soc. 107 (1921).
12. See Merican, "A Check List of State Judicial Council Reports from their Beginning through 1947," 41 Law Lib. Jour. 135 (May, 1948).
13. Report, p. 135, draft act, Section 2.
14. Ch. 20, Acts 1928, quoted in Fourth Biennial Report, Judicial Council of Kentucky, p. 13 (1936).

A more extended statement of the judicial council's powers and duties appears in the New York statute:

"The Council shall have the powers and shall be charged with the following duties:

"(a) To make a continuous survey and study of the organization, jurisdiction, procedure, practice, rules and methods of administration and operation of each and all the courts of the state, including both courts of record and courts not of record, the volume and condition of business in said courts, the work accomplished and the results obtained.

"(b) To collect, compile, analyze and publish the judicial statistics of the state in compliance with Article six, Section twenty-two, of the constitution.

"(c) To receive, consider, and in its discretion investigate criticisms and suggestions from any source pertaining to the administration of justice and to make recommendations in reference thereto.

"(d) To keep advised concerning the decisions of the courts relating to the procedure and practice therein and concerning pending legislation affecting the organization, jurisdiction, operation, procedure and practice of the courts.

"(e) To recommend from time to time to the legislature any changes in the organization, jurisdiction, operation, procedure and methods of conducting the business in the courts which can be put in effect only by legislative action, and to recommend to any court or to any body vested with the rule-making power for any court any changes in the rules and practice of said courts or the methods of administering judicial business therein which, in the judgment of the Council, would simplify and expedite or otherwise improve the administration of justice therein.

"(f) To adopt and from time to time to amend and promulgate with the force and effect of law rules and regulations not inconsistent with any statute with respect to the manner of keeping records of the business of any court."[15]

To these might be added the unique provision of the California Judicial Council giving it the power and duty to—

"Adopt or amend rules of practice and procedure for the several courts not inconsistent with laws that are now or that may hereafter be in force; and the Council shall submit to the legislature at each regular session thereof its recommendations with reference to amendments of or changes in existing laws relating to practice and procedure."[16]

15. Consolidated Laws, Ch. 30, Art. 2-A, Sec. 45, 14th Ann. Rep., Judicial Council of N. Y., p. 8.

16. Senate Const. Am. No. 15, Ch. 48, Stats. 1925, adopted Nov. 2, 1926. From 11th Biennial Rep., p. 6 (1946). See "California Seeks Judicial Council with Rule-Making Powers," 8 J. Am. Jud. Soc. 173 (April, 1925).

17. Fourth Biennial Rep., p. 14 (1936).

18. N. Y. J. C., 14th Ann. Rep., p. 48.

JUDICIAL STATISTICS

A common thread running through these and all other definitions of the work of a judicial council is the preparation and publication of facts and statistics on the work of the courts. Prior to the judicial coucil era, judicial statistics were practically unknown. Even today, they are kept only in a minority of states, without uniform standards for compilation and interpretation, for local purposes only or else blindly for no particular purpose at all.

The practical value of reliable statistics on the work of the courts cannot be questioned. They are a prerequisite to the establishment of systematic arrangements for assignment of judges to equalize the burden of judicial work from circuit to circuit. They ought to be available to back up requests to the legislature for additional funds or for any other legislative changes. Intelligently studied and interpreted, they can result in savings of money and improvements in operation. Two examples of the practical value of judicial statistics were cited by Judge Richard Priest Dietzman in a report to the Judicial Council of Kentucky.[17] Judge Charles E. Clark, then dean of Yale Law School, made one study of mortgage foreclosures indicating that less than ten per cent of them were contested and suggesting a simpler and less costly method of foreclosure for the nine tenths who did not care for their day in court. Another study, also by Judge Clark, showed that Connecticut judges in personal injury cases tried without a jury had rendered more judgments for the plaintiffs and had awarded higher damages than juries, suggesting the uselessness from the plaintiff's standpoint of incurring the added expense and delay of jury trial. Statistics kept by the New York Judicial Council on jury disagreements in civil cases before and after adoption of the five-sixths verdict demonstrate beyond the possibility of argument the effectiveness of that device in preventing unnecessary expense and delay from that source.[18]

The work of the judicial councils in keeping judicial statistics ranks among their foremost responsibilities and opportunities. Only a minority of them do it now, and comparison

of figures from state to state is unsafe on account of inconsistencies such as that once noted by Roscoe Pound, who found more larceny reported in a rural state than in an urban and industrial state, due to the fact that the former had enlarged the definition of larceny, to include many crimes outside of the strict common-law definition to which the other state still clung. A useful project for some nation-wide organization such as the National Conference of Judicial Councils would be to set up procedures as uniform as possible for the compiling of usable uniform judicial statistics in all the states. In the meantime, those of New York and California, and the United States courts so far as applicable, developed in each case as a result of thorough study by competent research staffs, might profitably be studied by judicial councils elsewhere interested in making their statistics meaningful and usable.

Columns of figures are not alone sufficient to form a picture of the work of the courts. The best of figures need interpretation, and who is in a better position to interpret them than the judge of the court involved? A most excellent provision is that of the Judicial Council of Kentucky for a report by each circuit judge "setting forth the conditions in the circuit courts over which he presides, and of the business dispatched and pending in said courts." For example, a report showing a large increase in a certain type of crime might prove misleading to researchers unless accompanied by a statement of the particular circumstances at the time responsible for the variation from normal. A judge's written summary of conditions and progress in his circuit would be of immense value if nobody ever read it but himself, and all the more so if the other judges had the privilege of comparing it with their own. It appears from examination of the biennial reports of the Kentucky council that little attention has been paid to this requirement of the statute, and that judges have not been submitting these reports. If that is true, here is a neglected opportunity for Kentucky judges to benefit themselves and each other and also to set Kentucky up as a model which, given a successful showing in that state, would surely be followed by others elsewhere in the country.

PROCEDURAL RULE-MAKING

The paragraph quoted from the charter of the Judicial Council of California suggests another major field of usefulness for the judicial council—implementation of the rule-making power. This is not the time or place to discourse upon the rule-making power itself, except to note that rules of court cannot be expected to serve their purpose well unless they are written with those purposes in mind by someone who knows how to achieve the ends sought, and are watched by somebody with the ability to gauge how well they are working out and authority to procure the adoption of amendments as the need arises. State legislatures, which have carried and still carry the bulk of the rule-making burden, do so blindly, having virtually no understanding of the problems involved and no occasion to become informed regarding them. Courts themselves are in the best position to perform this function except for the single difficulty that they ordinarily cannot spare from their regular work the time and effort necessary for a job of this kind. The obvious solution is to delegate the spade work to someone with the requisite time, ability and facilities, and then let the court approve or reject that person's or committee's recommendations. Such has been the course of most of the procedural reform in this country for the past twenty years.

The special advisory committee such as used by the United States Supreme Court in the revision of the federal rules of civil and criminal procedure is a partial answer to this problem, but it is ordinarily an *ad hoc* committee, disbanded upon the completion of a specific job. If it were given permanent status to perform the second function of keeping watch for needed amendments, then it would be something very close to a judicial council, and such indeed is the nature of the organizations we have listed as *de facto* judicial councils in Pennsylvania and Wisconsin.

No better source of assistance in this work can be found than the regular judicial council of a state, along with its regular research staff and facilities. The California council is unique in that the rule-making power is vested directly in the judicial council itself, but any judicial council can serve as an advisory committee on rules of procedure to its supreme court or its legislature, either one, with excellent results.

A MINISTRY OF JUSTICE

Mr. Justice Cardozo nearly thirty years ago

pointed out with his usual clarity of thought and expression the need for some agency upon which the legislature could rely for advice in matters judicial.

"The legislature," he said, "informed only casually and intermittently of the needs and problems of the courts, without expert or responsible or systematic advice as to the workings of one rule or another, patches the fabric here and there, and mars often when it would mend. Legislatures and courts move on in proud and silent isolation. Some agency must be found to mediate between them."[19]

The function of the state judicial council as an authoritative, unbiased governmental agency available to assist the legislature on request with respect to matters before it within its field ranks in importance with any others it may have.

A bill is introduced into the legislature proposing, let us say, to rearrange the judicial districts of the state, to add another judge to the supreme court, or to permit majority verdicts in jury trials. What is the legislature to do? The proposal is either right or wrong, or partly right and partly wrong. There may be conflicting bills on the same subject. How choose among them? At every session the legislatures of New York, Massachusetts, Kansas and other states solve these problems by turning over the proposed legislation to the judicial council for its recommendations. Often these involve extended research before the council's answer may be given. When the answer comes back the legislature may or may not follow it, but it does most of the time, and often enough to make the effort well worth while. The Twenty-Third Report of the Judicial Council of Massachusetts lists thirteen affirmative and fourteen negative recommendations adopted by the 1947 legislature, along with three not adopted, all being matters specifically referred to the judicial council by previous sessions. That same legislature referred the subject-matter of seven more bills to the council with requests for a report, and the council's recommendations thereon are part of the Twenty-Third Report and will be acted upon by the legislature in 1949.

It would be an unnecessary and undesirable restriction on the power of the judicial council if it were limited in its studies to matters thus specifically referred to. The Texas council on its own initiative has labored strenuously over a period of years to draft a proposed revision of the judicial structure of the state. The similar project of the Minnesota Judicial Council a few years ago was likewise self-started, and such projects conceived by the councils themselves are to be found on the agenda of all that are equipped for such work.

COMPLAINTS AND SUGGESTIONS

Finally, every judicial council ought to be a clearing house and sounding board known to the general public as a place where complaints and suggestions regarding the judicial system may be lodged by anybody with assurance that they will receive competent and authoritative attention.

"Suggestions and criticisms come to us from all sources," says Leonard S. Saxe, executive secretary of the New York council. "After consultation with the chairman, many suggestions are rejected upon receipt. Some are rejected after preliminary research as unworthy of being brought to the attention of the council. The council rejects some proposals submitted to it after research, and more frequently modifies them. Likewise, the legislature either rejects or modifies some council proposals, and finally the governor occasionally vetoes a legislative enactment. Under this winnowing process, it is difficult for any unmeritorious matter to be enacted into law."[20]

BEYOND THE PALE

Definition by exclusion is quite as useful in its way as definition by inclusion, and there are some points worth making as to matters not properly within a judicial council's domain. One is improvement of the substantive law. There is doubtless as much need for services akin to those of a judicial council in that field as in the remedial field, and except for the appropriate committees of the bar associations, there is no agency available for that purpose, but the judicial council cannot profitably extend itself so far. The Louisiana Law Institute does serve a three-fold capacity as a permanent law revision commission, a judicial council, and an agency for legal research and publication of materials bearing on the Louisiana Civil law.[21] It is significant, however, that a move-

19. Cardozo, "A Ministry of Justice," *Selected Writings*, p. 357.

20. Saxe, "The Judicial Council of the State of New York: Its Objectives, Methods and Accomplishments," 35 Am. Pol. Sci. Rev. 933 (Oct., 1941).

21. Hebert, "Louisiana State Law Institute—An Ideal Project," 25 J. Am. Jud. Soc. 155 (Feb., 1942).

ment is under way at this moment to secure the organization of a regular judicial council in that state,[22] lending support to the proposition that the field undertaken is too large for one organization.

The second limitation on the judicial council is that except under extraordinary circumstances it ought not to assume the role of advocate for the measures it has recommended. In New York, says Mr. Saxe again—

"—The Council's functions are purely advisory. For this reason, it is generally recognized that the Council's recommendations are unbiased and solely in the public interest. . . The New York Judicial Council, as a purely advisory body, can properly only publish its report and recommendations, and prepare its bills, thereafter confining its contact with the legislature to the Council's four legislative members. It cannot with propriety do more to further its recommendations if the legislature should fail to act."[23]

For a judicial council to abandon this standard and get out and plug for the particular side of a controversial issue that it has endorsed is to give up its status as a disinterested and impartial appraiser of the public interest involved, and to cast doubt upon the disinterestedness of all its other recommendations and pronouncements. So far as I know, no judicial council ever has done this, but it is possible that it might have been done at times under special circumstances with no harm resulting.

(To be concluded)

22. Letter, June 22, 1948, from Judge Carlos G. Spaht, Baton Rouge.
23. Saxe, *op. cit.*, note 20.

The Proposed Missouri Evidence Code

By CHARLES L. CARR

GREAT STRIDES — to modernize, simplify, make uniform and codify the law—have been taken in many branches of the substantive law and in some branches of the procedural law. Such progress has been accomplished largely through the efforts of the Uniform State Law Commissioners, the American Law Institute, the American Judicature Society, the American Bar Association and various state and local bar associations throughout the country working in cooperation with the courts and legislative bodies, both federal and state.

In the substantive field we can point with pride to numerous uniform, simplified and codified state laws which have clarified the law and made it more efficient. The Uniform Negotiable Instruments Act is a well-recognized and outstanding example.

In the procedural field, particularly with reference to pleading and practice, we have progressed a long way. Common law and equity pleading and practice, encumbered by formal and technical requirements which ensnared many capable lawyers and resulted in many cases being dismissed without the merits being determined, have been discarded and new, up-to-date and simplified codes have taken their place. I need but call attention to the recently adopted federal rules of civil and criminal procedure and to the new Missouri Code of Civil Procedure for outstanding accomplishments.

The legal profession has, however, long and grossly neglected one branch of the procedural law, namely the law of evidence.

Aside from the recent (1942) work of the Committee on Evidence of the American Law Institute in the formulation of a "Model Code of Evidence" (which is a step in the right direction but needs many limitations, amendments, and corrections, and which, being too radical and revolutionary, will not be adopted in its entirety), no systematic and complete overhauling of the rules of evidence, to my knowledge, has been attempted. The bar has been content to limit its efforts to the spasmodic and piecemeal amendment of a particular evi-

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dence rule without any thought being given to the systematic modernization of evidence law in its entirety. The outstanding recent example of this is found in Rule 43(a) of the new Federal Rules of Civil Procedure where, in order to liberalize the rules with respect to the admissibility of evidence, it is provided that if evidence is admissible either under the statutes or general law of the United States or under the law of the state where the particular federal court is held, the trial judge shall permit the introduction of such evidence. Such rule but complicates rather than simplifies the task of the federal trial judge, as he must be advised with regard to two sets rather than one set of voluminous evidence rules. No thought whatsoever is given to the simplification of the evidence rules themselves.

Leading authorities on the law of evidence long have been critical of the confusion in such law. Recently such authorities point the way for a solution of the problem, namely in the formulation and adoption of a modern and simplified code of evidence setting forth the underlying basic principles upon which the rules of evidence are founded but eliminating from any such code the application of such basic principles to the myriad factual situations, that is, except in those few and isolated instances where a factual situation is a part of the particular underlying basic principle. The confusion in the law of evidence as it has existed in the past, and as it continues today, is due largely to the fact that the basic principles of evidence have been and are relegated to the background with the emphasis being placed almost entirely on precedent in comparable fact situations.

A recent president of the American Bar Association has criticized the above condition by stating: "The law is ceasing to be a question of principles, and is becoming a mere question of patterns."

When Sir James Stephen was drafting his once celebrated Digest of Evidence, a lawyer contemporary was very critical thereof and advised Sir James: "My evidence bill would be a very short one; it would consist of one rule, to this effect: 'All rules of evidence are hereby abolished'."

In 1922, a learned writer (Chaffee's "Progress of the Law", Harvard Law Review, Vol. 35, p. 302) on the subject of evidence said: "The best proof of progress in this branch of law would be its virtual disappearance from our appellate courts."

In 1923, John J. McKelvey, in his preface to his Third Edition on Evidence, commented:

"Much has been written on the need for reform in our methods of arriving at the facts in judicial proceedings. Just now the pendulum of sentiment on the part of a few lawyers and laymen has swung to an extreme of liberality in the desire to get rid of rules. The road to the real facts of any situation presented to a court is a difficult one, and the traveler is quite as likely to be lost in a maze of uncertainty by too many signs as he is to be left in doubt by too few."

A modern legal reformer has summed up the present situation concerning legal evidence as follows: " Any thoughtful lawyer who will merely thumb the pages of Wigmore will be convinced that the existing law of evidence is in hopeless confusion."

Professor Wigmore in the preface to his Third Edition of *Wigmore on Evidence* points out the restlessness of the bar under the present confused and uncertain rules of evidence and indicates a possible solution in these words:

"The last decade * * * has seen the opening of a new phase in the profession's attitude toward the rules of evidence, viz. a disposition to reconsider the rules' weaknesses, and a willingness — even a determination — to improve that body of law in every possible part. So that the marked trend of the present period is a forward movement, destined within the coming generation to renovate radically the rules and the practice under the rules.

"This trend, (is) exhibited chiefly in new statutes, in liberal decisions, in bar association committee reports, and in law review articles. * * *

"This changeful trend may be accounted for by two or three separate influences. One of these is the general skeptical disposition of the times—the 'realist' attitude—ready to question any and every traditional rule or formula. Another influence has been the marked popular dissatisfaction with the obstructive 'technicalities' of legal procedure in general, and the demand for more flexible and more efficient methods; this including the rules of evidence."

Finally, Mr. Wigmore in the preface to his Students' Textbook on the Law of Evidence, published in 1935, clearly and concisely sums up the problem before us. He says:

"The time will never come when rules of evidence for judiciary investigations can be abolished. But the time has already come—it is visible in modern judicial opinions—

when the reasons of the rules are more and more necessary to be kept in mind by the practitioner. Long decades of experience of human nature in litigation have embodied great stores of shrewd wisdom and practical prudence in these rules. And these principals of wisdom and prudence must be understood and preserved, even though a thousand petty details in statute and decision be changed or discarded. This will be the problem and the task of the coming generation at the bar."

Summing up the above comments of leading authorities on the law of evidence, it is clear, without the necessity of argument, that the rules of evidence cannot be abolished in their entirety but that they should be embodied in a code of the sound underlying basic principles.

Such a solution would eliminate the confusion caused by (a) the conglomerate and incongruous mass of innumerable rules and exceptions which are beyond the normal ability of any attorney to master, and (b) the countless and conflicting court decisions with varying language and shades of meaning differently interpreting the basic common law rules of evidence.

At first blush the task appears herculean but when the matter is given careful study one is surprised to find that a proper evidence code can be reduced to a relatively few simple, clear, and definite evidence rules.

A careful study of Mr. Wigmore's books on evidence discloses that the present-day essential basic underlying principles of the law of evidence can be reduced to a relatively few proper rules which can be codified; that it is unnecessary to trace fully the history of each principle and to attempt in detail to apply such principles to the unlimited factual situations that arise in lawsuits except in those few instances where the specific factual situation is coextensive with or forms an integral part of the underlying basic evidence principle.

The Board of Governors of the newly integrated Missouri Bar in the first year (1944-1945) of its existence, recognizing the worthwhile accomplishments of the new Missouri Civil Code in the fields of pleading and practice, and believing that similar results can be obtained by the formulation and adoption of a Missouri Evidence Code, created the Evidence Code Committee of the Missouri Bar as a special committee of the Board of Governors, to continue in existence until its work of formulating an evidence code and of having it adopted by the Missouri legislature is completed.

The work of the Committee was divided among it members to avoid an undue burden on any one member. When a particular part of the work was completed by the member or members working on same it was submitted to the Committee as a whole and then redrafted in accordance with the suggestions of the Committee. Some of the sections were redrafted several times. The entire evidence code has now been prepared after four years of labor and has received Committee approval. A few of the provisions contained in the proposed code met with varying ideas of the Committee members but even such provisions have the approval of a majority of the Committee.

The proposed evidence code as formulated by the Evidence Code Committee has now been published by the Missouri Bar, with the approval of its Board of Governors. The Committee has invited suggestions and constructive criticism of the Code as drafted, and has earnestly requested the full cooperation of the bar in the consummation of this worthwhile undertaking to improve the administration of justice.

The proposed Missouri Evidence Code is for the most part a codification of present Missouri law as contained in the Missouri statutes and well-written Missouri decisions. The present Missouri law is departed from only in a relatively few instances (some of minor import) where it is necessary to eliminate technicalities and some evidence rules which are improperly obstructive in relation to the introduction of evidence. Unlike the new Missouri Civil Code, the proposed Evidence Code, except in the few instances above referred to, is not changing the present Missouri evidence rules as known by Missouri lawyers; it merely codifies them, condensing and simplifying the statement thereof, and setting them forth in a Code where they may be easily found without lengthy search and research.

The Missouri Evidence Code differs from the Model Code of Evidence of the American Law Institute in the following particulars:

1. The Model Code does away with the hearsay rule and its exceptions, which were developed over years of experience, and authorizes the introduction of hearsay evidence—both

primary and secondary—without any real limitation. The Missouri Code retains the hearsay evidence exclusionary rule and its exceptions, which have been established by experience as sound and of present day value;

2. The Model Code gives an unbridled discretion to the trial judge to admit or exclude evidence—even very material evidence. The Missouri Code limits the discretion of the trial judge to those matters recognized as proper in Missouri as subject to the judge's discretion.

3. The Model Code is purely abstract in form. The Missouri Code applies the fundamental principles of evidence to recognized Missouri examples thus aiding the practitioner and the judge.

The Model Code on account of the above three features is too radical for adoption in Missouri. The Missouri Code is conservative, based on Missouri decisions and present day Missouri law except in those few instances where it is recognized that a given rule should be modified or changed to render the evidence rules more efficient or to advance the administration of justice.

The Missouri Evidence Code does not hesitate to adopt and to pattern some of the particular rules of evidence after the provisions contained in the Model Code and in these instances the Model Code has been quite helpful.

Some of the many benefits and advantages of an evidence code may be enumerated as follows:

1. The evidence law will be brought up to date and made more efficient and workable in line with present day conditions and practices.

2. The codification of the fundamental principles of the law of evidence will save endless time of both lawyers and judges in running down repeatedly pertinent court decisions and in trying to ascertain the true evidence rule to be gleaned from numerous, and ofttimes conflicting, court decisions.

3. Codified rules of evidence will be definite and in clear statutory form; not subject to change by varying ideas of courts as to the true common law rule.

4. Briefs will need fewer citations, will be shortened, and less expensive.

5. Attorneys and judges will be better versed in the rules of evidence with the result that trials and litigation will be expedited and fewer cases will be reversed on evidence errors.

6. Criticism (in part justified) of the courts and the legal profession will be lessened.

7. The administration of justice will be improved and made more efficient, to the benefit of parties litigant as well as lawyers and judges.

8. When the Code of Evidence—condensed, simple, and clear—has been enacted into law, the bar can then ask the legislature to require administrative boards, as well as the courts, to conduct their hearings in accord with the Evidence Code and thus raise the standards of such hearings.

When the proposed Missouri Evidence Code was published in September, 1948, it was sent to all of the members of the Missouri Bar and copies were also sent to the justices of the Supreme Court of the United States, to the Senior Circuit Judge of each United States circuit court of appeals, to the judges of the Eighth Circuit Court of Appeals, to the chief justice of each state court of last resort, to the deans and evidence professors of all accredited law schools, to the presidents of the various state bar associations and to others who requested copies. The committee requested and invited any suggestions that would serve to better the code as then drafted. Many commendatory letters and many helpful suggestions have been received. Commendatory excerpts from leaders of the legal profession—judges, teachers and practicing lawyers—are contained in an article published in the April, 1949, *Journal of the Missouri Bar*. The suggested amendments which have been approved by the Evidence Code Committee will be found in the May, 1949, issue of that *Journal*.

The Evidence Code Committee is very appreciative of the assistance and cooperation that has been received from leaders in the field of evidence all over the country.

It is understood that The National Conference of Commissioners on Uniform State Laws has included in its agenda the matter of codifying the fundamental principles of evidence in the form of a uniform state law and that the proposed Missouri Evidence Code along with the Model Code of Evidence of the American Law Institute is to be used as the basis for discussion in the formulation of such a uniform state law.

We are likewise informed that a goodly num-

ber of state bar associations have appointed evidence code committees and are considering the proposed Missouri Evidence Code in the formulation of evidence codes for their particular states.

The Missouri Bar is now carrying on an educational program with respect to the proposed evidence code and its provisions are being discussed at district meetings over the state as well as before circuit and local bar groups. When the lawyers of Missouri have had a full opportunity to read and digest, and have been given an opportunity of hearing the evidence code discussed, the Board of Governors of the Missouri Bar will conduct a mail poll of the Missouri lawyers to ascertain (1) if they desire the fundamental principles of the law of evidence codified, and, if so, (2) to ascertain their preference with regard to several controversial issues that have arisen, namely, (a) whether or not the dead man's statute should be repealed and (b) whether or not a juror should be permitted to impeach his verdict, at least to the extent as provided in the proposed code. If the majority of the Missouri lawyers vote in favor of the adoption of the proposed evidence code, as we believe they will, a bill will then, in due time, be introduced in the Missouri Legislature for enactment. It is felt that when this is done the members of the Legislature will recognize the long and careful labor that has gone into the formulation of the Code, will welcome the assistance of the bar, and will cooperate to enact this highly beneficial legislation to advance the administration of justice.

Jeremy Bentham, English jurist of the early nineteenth century, said: "Evidence is the basis of justice." May the legal profession ever keep such thought vividly in mind and ever strive to uphold the doctrine that it announces.

Bills Condemning Picketing of Courts Before Congress

Legislation to make the picketing of federal courts a punishable offense has been introduced in Congress and has been approved by a special committee of the American Bar Association appointed May 17 by President Frank E. Holman. Following is the text of the new section proposed to be added to the United States Code by bills S. 1681 and H. R. 3766:

"Section 1507. The picketing or parading in or near a building housing a court of the United States or in or near a building or residence occupied or used by a judge, juror, witness or court officer with the intent of interferfering with, obstructing or impeding the administration of justice, or with the intent of influencing such judge, juror, witness or court officer, is hereby declared an offense and any such person or persons so picketing or parading shall be fined not more than $5,000.00 or imprisoned not more than one year, or both."

The following paragraphs are from the A. B. A. committee report, presented by its chairman, Charles S. Rhyne of Washington, before a joint session of the House and Senate judiciary committees:

"The practice of picketing courts is of recent origin, and, so far as this committee is aware, has been employed solely in connection with proceedings involving Communistic Party members or sympathizers. At the time of the opening of the current trial of Communist Party leaders in the federal district court in New York City some five months ago, our newspapers carried accounts of the picketing conducted by large crowds outside the court building. Similar occurrences took place at the federal district court in Los Angeles last winter during contempt proceedings arising out of an investigation of Communist Party activities. As an indication of the situation thus created, this committee is informed that large crowds, sometimes hundreds, paraded around and picketed the Federal Building, carrying picket signs, passing out literature, and even surging into the building in large numbers, overcrowding the courtroom and corridors and making it next to impossible for persons having legitimate business to go where they were required to be. In addition, the residence of the judge was picketed. When argument was being heard in this Los Angeles case in the Court of Appeals in San Francisco, not only was the building picketed, but a sound truck was employed outside the building and created so much

noise that it seriously interfered with the ability to hear the proceedings inside the building, requiring the Court to dispatch the marshal to put an end to the noise. It can readily be seen that such activities, if allowed to go unchecked, can detract immeasurably from the dignity befitting a judicial proceeding.

"Recent years have witnessed an increased emphasis on the constitutional rights of freedom of expression and discussion, and in some instances local legislation has been invalidated for imposing restraints on such fundamental liberties. It is a paradox that often these liberties have become the 'shield and armor' of those who would ultimately destroy the political philosophy and cast aside the very instrument giving rise to the asserted rights of freedom of expression and discussion. This paradox is, however, of no moment, for the safeguarding of these rights to all individuals is essential to free government.

"In order to achieve an independent judiciary and to insure orderly and impartial judicial proceedings, the federal government and the states have provided for the suppression and punishment of attempts to obstruct or interfere with the judicial process. This has been done by granting to the judiciary the power to punish through summary proceedings all contempts of court and by declaring that any attempt to threaten, intimidate or impede any witness, juror or officer of the court is a crime.

"The proposed legislation is aimed at conduct carried on in the immediate environs of the courthouse and designed to influence jurors and witnesses. While judges may be men of great fortitude and well able to brave the storm of public opinion, we cannot assume that jurors and witnesses will be of such stoic or Olympian nature. The actual physical presence of picketers and paraders outside a courthouse who are attempting to obstruct and interfere with the proper administration of justice would certainly tend to have a positive effect upon those who are participating in judicial proceedings.

"The proposed legislation does not declare that peaceful picketing or parading in or near a courthouse of the United States is a crime. It does, however, declare that picketing or parading with the intent to obstruct the administration of justice is a crime. The latter conduct clearly is not within that area of free speech and expression protected by the First Amendment to the Constitution of the United States. The interests of society dictate that such conduct in the immediate environs of a court house with the intent to obstruct the administration of justice be declared anathema to our concepts of justice according to law."

Paragraphs

46,000 VETERAN LAW STUDENTS are included among the 2,535,385 enrolled in schools and job training establishments under the G. I. Bill and the Vocational Rehabilitation Act, says a report of the Veterans Administration. Another 7,812 are taking pre-law courses.

THE NUISANCE OF BAR EXAMINATIONS again confronts Idaho law students, following the decision of the Supreme Court of Idaho in *In re Kaufman*, May 16, that the recent statute providing for admission to the bar without examination of graduates of the University of Idaho law school is unconstitutional. Meanwhile, the Supreme Court of Ohio, following complaints that the February, 1949, examination was too hard, has announced a reduction in the number of examination questions and other changes to make the ordeal less tough.

THE OPINION OF THE BAR on the qualifications of candidates for judge of the Supreme Court of Arizona and for attorney-general of that state will be secured through a secret poll and published this year by the State Bar of Arizona.

LAWYER POPULATION OF COLORADO has increased from one for every 772 persons in 1940 to one for every 625 persons at the end of 1948. Law school enrollments are 145 per cent over the 1939 figure, and applicants admitted to the bar were 85 per cent of the total as against 64.5 per cent ten years ago. William Hedges Robinson, president of the Colorado Bar Association, surveys these and other figures in an article in the August *Dicta* entitled "Where Are We Drifting?"

"SMEARING THE COURTS gets readers," observes James B. Cooney in the *Chicago Bar Record*, commenting on the article "Our Reeking Halls of Justice" in a recent issue of *Collier's*. Complacency on the part of the bench and bar, he suggests, in the face of such slanders upon the entire judicial system may well result in judges and lawyers later on fighting serious demands for socialized legal practice and more administrative justice.

Accountants and Tax Law — the Bercu Case

A landmark in the struggle against the practice of law by persons unauthorized and unqualified to do so was the decision of the New York State Court of Appeals on July 19 affirming that of the Appellate Division holding Bernard Bercu, a certified public accountant, in contempt of court and enjoining him from further practice of law in connection with his profession.

The following summary of the case and its implications was supplied by the New York County Lawyers Association, which was responsible for initiating this litigation and carrying it through three successive appeals to a successful conclusion in the highest court of the state.

The "Bercu Case" which has attracted the attention of the legal and accountancy professions throughout the country, had a modest origin in a New York City Municipal Court suit in April, 1944, in which Bernard Bercu, a certified public accountant of 1775 Broadway, New York City, sued his client, the Croft Steel Products, Inc., to recover $500.00 for professional services consisting solely of consultations and a written opinion on a matter of federal tax law.

In the opinion of Municipal Court Justice Hayes, Bercu rendered a legal opinion and was thereby practicing law illegally. His suit was accordingly dismissed.

The intervention of the New York County Lawyers' Association as *amicus curiae* followed upon an appeal from the Municipal Court decision which Bercu took to the Appellate Term of the Supreme Court. Bercu thereupon discontinued his appeal but the Association, determined to seek final answer to the questions raised, brought proceedings in Special Term of the New York Supreme Court to hold Bercu in contempt of court for unlawful practice of law and to enjoin him from a continuance of such acts. The Special Term was of the opinion, however, that Bercu's services did not involve the practice of law and that in any case the Court was without power in this class of proceedings brought by the Association to issue an injunction.

The Association thereupon took an appeal to the Appellate Division and was joined by the New York State Bar Association and the Association of the Bar of the City of New York, which filed briefs *amicus*. The decision of the Appellate Division, written in April, 1948, by Presiding Justice David W. Peck, reversed the Special Term.

The Court found that Bercu was not employed as an accountant but had offered for compensation to give his opinion on a tax law problem and had rendered a written opinion as well as oral advice on the questions of law involved. According to the opinion of Presiding Justice Peck:

"He was doing no accounting work for the Croft Company within the ordinary or proper conception of an accountant's work. He had nothing to do with the Croft Company's books or its tax return. He was not giving any advice as to how the books should be kept or how entries should be made or transactions or figures recorded. There was no question of the book or record handling of the facts and figures involved in the city's tax claims. The facts were all fixed and the only question was what view the tax authorities and ultimately the courts would take as to the years in which payment of the city's tax claims would be deductible for federal tax purposes. In short, legal advice was sought and given on a question of law."

Bercu was fined $50 for contempt of court and enjoined from "practicing or assuming to practice law in any manner and in particular from engaging in and charging for the giving of legal opinions in relation to the tax laws, and in rendering legal services in respect thereto for compensation and for the same purposes, from holding himself out or assuming, using or advertising himself as a tax counsel, tax counselor or tax consultant, or by any equivalent designation." He was not enjoined from applying his knowledge of tax laws and regulations in any matter in which he was employed primarily to practice public accountancy.

In a statement for the *Bar Bulletin*, publication of the New York County Lawyers' Association for May, 1948, Edwin M. Otterbourg, Chairman of the Association's Committee on the Unlawful Practice of the Law, said the decision "might well be a landmark in the jurisprudence in this state in this field". Throughout the country, local bar associations have sent

for copies of the opinion of the Appellate Division for study and analysis.

When Bercu appealed to the New York State Court of Appeals the American Bar Association's House of Delegates took the unprecedented step—in recent years—of deciding unanimously to intervene as *amicus curiae* in the Court of Appeals. The resolution of the House of Delegates expressly recited that "It is a matter of general and vital interest to the public and to the members of the legal profession to have judicially determined whether certified public accountants can continue to give tax law advice and to practice tax law as was found to have been done by the appellant Bercu".

In addition to the American Bar Association, the New York State Bar Association and the Association of the Bar of the City of New York joined with the New York County Lawyers' Association in presenting the matter to the Court of Appeals. The New York State Society of Certified Public Accountants has been active in the case throughout and in the Court of Appeals, the American Institute of Accountants filed a brief as well.

For the New York County Lawyers' Association, Edwin M. Otterbourg stated "Lawyers everywhere recognize the value of the legitimate services of certified public accountants. The proceeding was brought to prevent imposition on the public by so-called 'tax consultants' or 'tax specialists' who are not lawyers, and who, as a business, offer not to do accountancy work at all but to give legal advice. It is an example of a bar association's service not only to the legal profession but to the public at large".

Judge's Charge to Jury Should Precede Arguments of Counsel

By WILLIAM M. BLATT

Since the American Judicature Society is the outstanding repair shop of our legal machinery, I take the liberty of suggesting a bit of reconstruction which is not a novelty but which, it seems to me, has not become general enough, although it is the practice in Maryland, Missouri and a few other states. Let us pose the idea in question form. Why does the judge charge the jury after the arguments? Why not before?

The books say that the charge "traditionally" comes after the argument. Several states have rules confirming the practice. So have the federal courts. The rule is said to be mandatory.

The reasoning against charging the jury after argument must be obvious to any trial lawyer. The practice is clumsy, confusing, dangerous and inept. The lawyer must in his summation base his plea on the legal principles involved in the case, and under rules of practice he has no right to lay down those principles to the jury.

If, for example, he is arguing a motor tort case in which the plaintiff was a guest he may feel obliged to refer to the law that the defendant is liable only upon proof of gross negligence. But what is gross negligence? That involves a definition. Shall the lawyer define it? He risks correction and reproof by the judge and loss of face with the jury and consequent damage to his client's chances of recovery. The jury, when the judge has defined the term to his own satisfaction, will be confused by the change of mount in midstream. Or shall the lawyer omit all attempt to give a definition and state that the judge will take care of it later? If so, the jury is left in confusion, vagueness and wonder in the meantime.

Suppose the case hinges on the question of burden of proof, a ticklish distinction between reasonable doubt and preponderance of evidence. A very slight deviation from what the judge conceives to be the line brings a rap on the knuckles. But what is the advocate to do? He wants to present the point from his position and to emphasize the deficiency of his opponent's evidence, but he has no right to say to the jury, "this is the law." That should have been done for him already so that he could quote authoritatively from the judge's instructions. Instead, he is compelled to weaken

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his case by tentative pronouncements full of "if's," "but's" and "probably's."

I can think of no sensible reason why the charge should not come before the argument. The judge has all the necessary material. The arguments do not concern him unless they are irregularly made. The jury needs him at the end of the evidence when it is beginning to try to figure out what the parties' legal rights are—not after the arguments when it has been blown to and fro by windy appeals and without a rudder for guidance. The jury needs its legal orientation before it is submitted to the rival emotions of the opponents. Instead, the facts and the law are separated by the summations, although they are really parts of a unit, the case, and the jury gets the feeling that it is ready to begin to think about the verdict at the end of the evidence, which of course it is not. Confusion, misconceptions, mistakes and miscarriages of justice are the result.

If the judge has slipped in his charge or omitted a material legal principle he can be asked to correct it in time for the lawyer to make proper comment and application if it is done before argument. Under the prevailing system the correction comes after the jury has partly or wholly closed its mind to further enlightment, while the jurymen are shuffling their feet and mentally reaching for their hats.

Psychologically, too, one would say that the jurors should be left with the final impact of the arguments rather than of the judge's charge. They should go into the jury room with the impression that they are to decide between two contestants and they should have freshly in mind the contentions of each side. If instead they go into conference after a lecture on law, perhaps with hypothetical illustrations not drawn from the case before them, they have to restore themselves to the mood of controversy, in which they should properly be. Their attention should be fixed on the facts, not on abstract legal principles. The principles are important, but they should be in the background. Ultimately, the jurors have to decide what was done and by whom. If they are ever in doubt as to the way the law should be applied they can always ask the Court for further instructions, but they can usually ask for no more help on the facts. Every effort should therefore be made to get the jurors into the jury room with the facts as vivid and clear and recent in their minds as possible.

Jurors are handicapped enough already. They are not, as a rule, allowed to take notes, nor to question the witnesses, nor to argue with counsel, nor to use the experience of their daily lives in confutation of evidence presented, nor to request further evidence on vague points, nor to hear vital facts which are excluded by the laws of the trial. At least let us correct this simple procedural anomaly which, like many another intellectual monstrosity, has slept on the law for no apparent logical reason and remains only to bedevil us.

Improvement on "Appendix Method" Suggested

An alternative to the "appendix method" of designating the portions of the record to be printed on appeal is suggested in the report of the Committee on Ways and Means of Reducing Expense on Appeal delivered at the Tenth Circuit Judicial Conference in Denver last month.

"The major item of cost on appeal," the report states, "is the printing of the record. A study of the cases decided in the last few years discloses that a very substantial saving in printing could be effected if the attorneys would be more careful in preparing their designations for printing and eliminate all unnecessary portions not necessary to a decision in the Court of Appeals."

"There are some who might urge the adoption of the appendix rule," it adds, "that is, the attorney for appellant printing as an appendix to his brief the parts of the record he considers material and the attorney for appellee printing as an appendix to his brief the parts of the record he considers material. The difficulty with this rule is that the judges who have to decide the case are in a state of confusion due to the fact that they have to jump from one appendix to another and try to fit in parts of testimony in one appendix with parts of testimony in another appendix. . . . The attorneys have to pay for the printing of the appendix, and due to the fact that they do not have a

great deal of volume they are unable to secure as good a printing price as the clerk of the Court of Appeals, where the volume is great and the printers are anxious to secure the contract and consequently are willing to give a better page price.

"If designations are filed which only call for the material parts, a record printed under the supervision of the clerk of the Court of Appeals will not be any longer than the appendix record, and probably will be shorter due to his experience in eliminating repetition, duplication of titles and immaterial matter."

The committee cites a number of specific instances where savings could have been effected by eliminating immaterial matter.

"An examination of case No. 3744, Bradburn v. Shell Oil Company, discloses that the entire record was printed. There were at least seventy-five pages of testimony dealing with the competency of the plaintiff. On appeal his competency was not questioned, yet this evidence was designated for printing. If this evidence had not been printed, $200 of the cost of printing could have been saved.

"In many cases immaterial colloquy between court and counsel is designated for printing. In one printed record the following appeared: 'I am like the old woman that lived in a shoe, had so many children she didn't know what to do. I have got so many papers around here I get lost with them.' Counsel for one of the parties made this statement."

The appendix method originated in the Fourth Circuit a number of years ago and has saved litigants there and in other jurisdictions where it has been adopted hundreds of thousands if not millions of dollars. It is described in an article by Claude M. Dean, clerk of the Fourth Circuit, in the February, 1943, JOURNAL (26:148).

Michigan One-Man Grand Jury Is Nullified

The Michigan "one-man grand jury" has become a "three-man grand jury" as a result of legislation recently passed by the Michigan legislature drastically amending the thirty-two-year-old law creating the unique criminal investigative agency which has frequently been described and discussed in these pages. The power to grant immunity from prosecution as a result of information divulged also has been removed, and numerous other fundamental changes in its make-up and operation are included in the new statute.

This action of the legislature was the result of an intensive campaign against the institution largely by certain groups within the legal profession. The State Bar of Michigan a few years ago approved an amendment providing that the one-man grand juror should not be permitted to act as examining magistrate with respect to defendants he himself had sought out, but otherwise consistently advocated its retention. The effect of the amendments were appraised by Representative Louis C. Crampton in a speech before the House of Representatives as follows:

"The one-man grand jury system adopted in this state in 1917 to meet the demand of public-spirited citizens who sought an effective weapon to combat criminal rackets and official corruption which so seriously threatened good government has abundantly justified their hopes. In many spectacular instances and in hundreds of unpublicized inquiries it has accomplished results that have been vital to decent government in this state and that could not have been accomplished otherwise.

"The judges and the prosecutors who have made so effective use of this weapon against graft, official corruption, criminal conspiracy, legislative bribery, industrial terrorism, deserve and have the thankful appreciation of the people of Michigan for the splendid fights made and won. In these fights Ferguson, O'Hara, Dehnke, Carr, Sigler, Simpson and many others rendered services of the greatest value to the cause of democracy. State legislators, lobbyists for grasping private interests, a lieutenant-governor, sheriffs, high officials of state and local police, prosecuting attorneys, a mayor of our metropolis, top figures in the world of gambling and rackets, labor thugs and goons, the highest placed among criminals and recreant key men in public trust — they have reached and imprisoned such.

"Now this legislature lessens its record by wrecking the one-judge grand jury law. Not daring express repeal, the law is emasculated.

"Without the one-judge grand jury law of 1917 those many high-ups in civic crime could not have been reached and stopped in their nefarious practices. The legislature would still

smell to high heaven. What would Michigan be today if those men had not through their use of this weapon accomplished those things in the public interest?

"What, then, will be the future of Michigan when crooks need no longer fear this tested weapon?

"Notwithstanding the high standards for integrity and public service that have been so uniformly maintained by our judges, it is now urged that one judge cannot be trusted in judgment and impartiality. Three must act together hereafter in ordering and conducting these vital inquiries. The hundreds of minor inquiries that have so greatly aided the work of prosecutors will hereafter, in one-judge circuits, seldom be possible, and for the greater inquiries, it will be difficult to assemble three judges from various circuits for an inquiry that may last for months. When such a grand jury is assembled, much will be lacking in efficiency, speed, economy and determination through diffusion of authority and responsibility and handicaps on initiative, and through inevitable conflicts of several personalities. Nothing is gained by this complicating of authority, and the losses are beyond estimation. Difficult to assemble and maintain, uncertain in its operation, the idea has been eagerly grasped by those who desire destruction of the proven one-judge system.

"The attorney-general and prosecuting attorneys are to be barred from appointment or election to other office. Thus is to be prevented rewards by the electorate for duties well performed. An incidental effect is to bar the attorney-general from merited promotion to the supreme court, as has been customary for capable and proven men. Democracy is throttled by such devices.

"Through an unintended blunder in drafting, the new law will require every justice of the peace to refer to a circuit judge every criminal complaint.

"House Bill No. 287 is destructive of the most effective war on organized and entrenched crime and on criminal conspiracies involving those who betray official trust in the making and enforcing of the laws. If through referendum it is submitted to vote of the people it will be by them defeated. I want no part in this repudiation of law enforcement."

Columbus Lawyer Reference Statistics

Domestic relations problems were responsible for nearly a third of the cases handled by the Lawyers Reference Service of the Columbus Bar Association during the past year, according to the report of Joseph M. Harter, committee chairman. The 235 cases referred to lawyers for the first time consisted of 90 on domestic relations, 42 real estate, 34 contracts, 18 estate and probate matters, 12 personal injury and property damage, 8 criminal, and the rest a wide variety ranging from corporation law to workmen's compensation.

A total of 307 applicants were interviewed. In addition to the 235 references, 38 were sent back to lawyers they already knew, 27 to the Legal Aid Clinic, 6 were not referred, and one went to the Baltimore Bar Association.

Fees for first consultations totalled $509. 125 of the referred cases were known to have required additional services involving additional compensation. At least two of these ran up to $1,000, and one not yet concluded may pay as much as $8,000.

Paragraphs

NEARLY 150,000 MORE VOTES were cast on the Missouri non-partisan judicial ballot in 1948 than in 1944, according to a report of the Judicial Selection Committee of the Missouri Bar. Created a year ago to combat public lethargy which was felt to be endangering the successful operation of the Court Plan, the Committee engaged in an aggressive campaign throughout the state to see that the judicial ballots were distributed in all precincts and to urge voters to mark them in accordance with the bar's recommendations. Three-fourths of the additional votes were in favor ofthe judge running on his record.

THE LIBRARY OF CONGRESS now has 698,100 law books and pamphlets in addition to much material not in volume or pamphlet form.

COURT AND TRAFFIC LAW ADMINISTRATION CONFERENCES conducted by the Traffic Court Committee of the American Bar Association and the Traffic Institute of Northwestern University, will be held at the Yale Law School, New Haven, September 12 to 16, and at the Northwestern University Law School, Chicago, October 17-21. Further information and registration forms may be obtained by writing to the A. B. A. committee, 105 West Monroe St., Chicago 3, Illinois.

LAWYERS REFERENCE SERVICE, sponsored by the Bar Association of St. Louis, was inaugurated in that city at a special ceremony in the Circuit Court on April 29. The office is at 506 Olive Street, open from 2 to 4 p.m. daily, with Fred C. Schillinger, attorney, in charge. A similar service recently has been established in Akron, Ohio, by the Akron Bar Association, with Mrs. Marian Brock, executive secretary, in charge.

Judicial Progress in Virginia

Reestablishment of an active judicial council and organization of a new Judicial Conference of Virginia are two recent marks of progress in the administration of justice in Virginia described by Chief Justice Edward W. Hudgins in his address before the Fourth Circuit Judicial Conference a few weeks ago. Since the judicial council was revitalized, a little more than a year ago, it has drafted a handbook for petit jurors and a comprehensive revision of Virginia pleading and practice, which was approved by the Judicial Conference at its initial meeting, by regional meetings of the bar called by members of the Judicial Conference in thirty-one of the state's thirty-five judicial circuits, and by the State Bar at its 1949 annual meeting. The new rules, now before the Supreme Court of Appeals for adoption, are declared by Chief Justice Hudgins to constitute "one of the simplest and most up-to-date systems of procedure prevailing in any of the states," and superior in some respects to the federal rules. It is anticipated that they will go into effect on February 1, 1950, along with the new Code of Virginia adopted at the last session of the legislature.

Bar Television Programs Are Popular

Television is taking its place as a major public relations medium for the legal profession, with popular and successful programs being produced under bar sponsorship in New York, Chicago, Philadelphia and Cincinnati.

"Court Is in Session" is the title of the Philadelphia presentation, which emphasizes the role of the courts in protecting the rights of citizens under our form of government. The Chicago program, "Cross Question," appearing Tuesday evening on WGN-TV and the CBS network, is an hour-long dramatization of a realistic courtroom scene with experienced trial lawyers and professional actors and actresses as witnesses. One evening the studio audience jury deliberated too long and did not get the verdict announced before the program left the network. The New York offices were besieged with hundreds of calls during the next few minutes asking what the verdict was.

A real-life presentation of a "Cross Question" skit by the regular staff was featured at the Illinois State Bar Association convention in June and will be repeated at the American Bar Association convention in St. Louis next month.

The Reader's Viewpoint

Army Justice and Rights of an Accused

Mr. George E. Brand:

I consider it an honor to be invited to become a member of the American Judicature Society. I should like to contribute in a small way to "promote the efficient administration of justice." Very especially, I am interested in encouraging further modifications of the practices in the court martial system of the army and perhaps the other services.

The aspect of military justice that struck me as particularly lacking was the absence of any practice of acquainting an accused at the time the charges were preferred with the rights he has. The periodic reading of the Articles of War to an assembled unit of considerable size never has the desired effect. They never remember what little they may have heard and what little they may have understood. If, however, an accused were provided with a paper reciting his rights along with any charge sheet, he would read it eagerly and would see significance in words never meaningful before.

The practice grew up during the early part of World War II of setting up time tables requiring that in a given number of hours after an accused was put in confinement charges be preferred. Other time tables related to expeditious trials and expeditious review. Ostensibly this was designed to obviate long confinement with no charges preferred, and perhaps when there were none which could be fairly preferred, but in my limited experience the principal effect was to put pressure on commanding generals and others to speed the processes without regard to any other factor. The pressure for speed was so great that the accused was, for

practical purposes, afforded no opportunity to confer with defense counsel, to obtain witnesses, or to consider any of his rights. Frequently he was advised, "You will be found guilty, you might just as well plead guilty."

Were the accused in all cases, at the time charges were preferred, provided with something which he could read and re-read, which would advise him of his right to have facts either in defense or extenuation brought to the attention of the court; of his right to have a trial and not to be pressed to plead guilty; of his right to choose who should defend him; of his right to have the trial delayed long enough for him to gather his wits together, to say the least, and perhaps to have witnesses brought before the court; and of his rights against self-incrimination, there would be a great deal less work needful at the end of the war in reviewing records with a view to clemency.

WALTON SHEPHERD, JR.

Charleston, W. Va.

Assignment of Counsel in New Jersey

To the Editor:

It is true, as suggested by Allan T. Pray in the June JOURNAL that the time to provide counsel is at the time of arrest and before the prisoner has been influenced or frightened, and, as Mr. James V. Bennett said, that the first duty of the prosecuting authorities is to uphold the rights of every citizen. Provision for these conflicting aspects of the struggle by society to protect itself calls for rare and unusual balance. This has been attempted in the new Rules of Practice established under the New Jersey Constitution of 1947, Rule 2:3-3 (b) of which provides:

"The magistrate shall inform the defendant of the complaint against him, of his right to retain counsel and of his right to have a preliminary examination. The magistrate shall allow the defendant reasonable time and opportunity to consult counsel."

This has worked out very well in that the bar associations have been busy supplying counsel assigned to prisoners at time of arraignment, preliminary hearing, and, of course, after indictment, when another rule, 2:12-1, deals specifically with assignment of counsel. We also have adopted the rule of the McNabb case, providing for appearance before a magistrate "without unnecessary delay." There has been no report of police brutality in the public press since these rules went into effect on September 15, 1948. This is another example of the great reforms for which Chief Justice Vanderbilt sought so long and so earnestly.

ARCHIBALD KRIEGER.

Paterson, N. J.

Representation in Insanity Hearings

To the Editor:

I am in hearty accord with the idea that assistance should be provided for people accused of crime who have no money and no counsel. However, I think I wrote the Society some years ago about another matter that is probably more tragic than the defense of criminals. People convicted of crime by and by get their freedom again, but the poor devil who gets sent to the insane asylum never gets out. It is harder, if you please, to get out of the insane asylum than it is to get out of prison.

I do not know what the procedure is elsewhere, but my experience has been that they have the most perfunctory hearing possible. A couple of doctors sit around a table, write a report, and the judge signs the order of commitment. I suspect that half the time the judge does not even see the man. One lawyer has had twenty-eight successful writs of habeas corpus to get people who should never have gone there out of one asylum in this state. I have had some of these cases myself. In several of them relatives wanted to get rid of a man or woman and make away with his or her property.

In connection with the public defender system, why not provide also that anybody accused of insanity must be represented by counsel, a hearing had, and a stenographic report made of all testimony taken?

ELIAS A. WRIGHT.

Seattle, Wash.

Nebraska Bar and Legislature

To the Editor:

This is written without any desire to be critical, but more for the purpose of keeping history straight.

In the April JOURNAL the editorial "Bills, Voters and Legislators" is somewhat misleading in that it states that the judicial retirement bill which failed to pass in our 1949 legislature had the support of the bar.

At the annual meeting of the Nebraska State Bar Association held last November the Association did endorse a compulsory retirement bill which was far different from the one actually introduced

in the legislature. The bill which was introduced did not have the backing of this Association and indeed did not represent the unanimous views of our district and Supreme Court judges.

This is not too important, but we are rather proud of the excellent relations which have existed during the recent legislative sessions. For the past three sessions we have had almost one hundred per cent success in securing the passage of measures sponsored by this Association or by our judicial council.

GEORGE H. TURNER, Secretary.

Lincoln, Nebraska.

One Reason Why Lawyers Don't Specialize

To the Editor:

I was very much interested in Professor Bradway's article in the June number offering a new approach to the problem of unauthorized practice. He is right in saying that the present approach is negative and we ought to have something better, but for practical reasons I do not think he has offered it. His first suggestion of educating the public, which ties in with your preceding article on institutional advertising is highly advisable and certainly neglected, but his next suggestion that we provide more experts within the profession is well nigh impossible for economic reasons.

The point Professor Bradway and too many people overlook is that the lawyer has to make a living and to do so he has to get legal business. His lay competitors have the opportunity of becoming specialists in a particular field because they can get the business of that field by solicitation and advertising, a source forbidden to the lawyer. Any good lawyer who can manage to get enough business in one field is bound to become an expert in that field, probably more so than the layman for reasons of background knowledge if nothing else. He can even acquire this expertness without special formal schooling.

We have got to turn the lawyer loose in bringing in the business, which is of course unthinkable, or we have got to stop the layman from using avenues for getting business that are forbidden to the lawyer, or stop his illegal practice altogether. This is not to minimize the desirability of special training but to state one of the fundamental reasons why the lawyer is losing business to the non-lawyer in some fields of endeavor.

TERRELL MARSHALL.

Little Rock, Ark.

The Literature of Judicial Administration

BOOKS

No better way to study an institution or a cause can be found than to study the personalities involved in it and responsible for it. In a series of lectures delivered at the University of Michigan last year and just recently published in book form [Arthur T. Vanderbilt, *Men and Measures in the Law.* New York: Alfred A. Knopf, 1949. Cloth, 156 pages. $3..00], Chief Justice Arthur T. Vanderbilt of the Supreme Court of New Jersey has traced the course of legal and judicial reform through the centuries and surveyed its present scope and prospects in relation to the men whose names have been identified with it. Beginning with Jeremy Bentham, A. P. Herbert and Lord Mansfield (and Baron Parke as a minus quantity), he concludes with such American leaders as Roscoe Pound, Thomas W. Shelton, David Dudley Field, John J. Parker and Herbert Harley. Although there is no hint of it in his text, future generations will rank Vanderbilt himself as one of the greatest of this group, and this fact lends weight to his appraisal of his predecessors and contemporaries and their work in his field. The last lecture, "Suggestions for a Program of Procedural Reform," is a concise and useful summary of what remains for those who in the future will carry on the work of Bentham and Pound.

The most delightful book in the field of legal biography to appear in many a day is *Missouri Lawyer* [Philadelphia: Dorrance and Company, 1949. Cloth, 391 pages. $3.50], the entertaining and readable life story of John T. Barker, former attorney-general of Missouri and long-time leader of the Kansas City bar, told by himself. The story is as many-sided as the author himself, whose half-century of experience ranged from his spirited rendition in court of George Graham Vest's eulogy on the dog, in vain defense of his first client, charged with keeping a vicious animal, to his successful representation, many years later, of the people of Missouri in the multi-million-dollar fire insurance rate cases. His story includes the still-unsolved murder of Leila Welsh in 1941, whose brother he defended; several summers of touring the country as a Chautauqua speaker; sidelights

on the story of Frank and Jesse James and on the career of Tom Pendergast, one-time political boss of Kansas City; and on the man Pendergast started on the road to the White House, Harry S. Truman, whom Barker once represented in litigation involving the Jackson County Court.

Incidentally, Barker's chapter on Truman was deleted from the manuscript by the publishers about a year ago with the explanation that after the November election it would be of no interest to anybody. On November second or third they hastily telephoned him to ask if he had saved a carbon copy. He had.

One field into which General Barker's versatility never led him was the judiciary. He is a lawyer's lawyer, and the message of his book, if it has one, is to glorify the American Lawyer. He says:

"The lawyer in every age and in every clime has been the outstanding character in history. He has made governments and destroyed governments. At all times he has been a great moral force, and his life has been an inspiration to youth. Lawyers have framed every constitution and prepared every code of law. The lawyer's has been the hand that guaranteed the security of life, property and liberty. His influence has developed civilization and made the world a better place in which to live."

For more than a decade the bulk of the American Bar Association's efforts toward improvement of judicial administration have consisted of promotion of the specific program drafted in 1938 by the Section of Judicial Administration and later approved by the House of Delegates. That program, comprising sixty-seven separate recommendations under seven main headings, together with elaborate supporting studies, constituted the 140-page report of the Section of Judicial Administration in Volume 63 of the *A. B. A. Reports*, which has served as handbook, blue-print and Bible for the Special Committee on Improving the Administration of Justice and its forty-eight state committees during the intervening years.

Last summer at Seattle the House of Delegates abolished the Special Committee and remanded its work, including supervision of the work of the state committees, back to the Section. As an incident to this reorganization, the Section has recently published a booklet, *The Improvement of the Administration of Justice*, to serve as a revised and up-to-date handbook, blue-print and Bible for use in what it is hoped will prove to be a redoubled campaign for the achievement in all states of the goals set by the Association in 1938.

The *Handbook* does not purport to cover the whole ground of needed judicial administration reform. As stated by President (now Chief Justice) Vanderbilt in 1938,

"The recommendations of the seven committees are limited in number to those matters which are absolutely essential if the administration of justice in America is to be responsive to the needs of our times. . . They are matters on which all who have taken the time to reflect are in substantial agreement."

As listed in the Table of Contents they include the rule-making power, unified judicial system and the administrative judge, an administrator for state courts, judicial statistics, judicial councils, judicial conferences, pre-trial conferences, several items under the heading of trial practice, the law of evidence, improvement of the jury system and the method of selection of jurors, various proposals under the heading of appellate practice, administrative procedure, and selection of judges. As to each of these there is a concise summary of background information, the arguments for the proposals advocated, and, in some instances, a valuable survey of the extent to which they already have been adopted in the various states. Appendices explain three other important projects in which the Association is interested, a study now being made of judicial administration in metropolitan trial courts, the Conference of Chief Justices, and the program for improvement of traffic courts and justice of the peace courts.

A job like that before this Section may be resolved into two parts: kindling interest and willingness to work on the part of those who must bear the burden of the task, and then handing them something concrete to sink their teeth into. The *Handbook* will admirably serve that latter need. It is being distributed as a matter of course to Section of Judicial Administration officers and committees and to A. B. A. officialdom. We do not know precisely where else it is being sent, but it ought to be in the hands of every state and local bar association officer and it should be widely distributed in law schools and among law students. Copies may be secured from the secretary of the Section, Leland L. Tolman, Supreme Court Building, Washington 13, D. C.

ARTICLES

"Standards of Practice for Arbitration," by Frances Kellor. The Arbitration Journal, Vol. 4, No. 1, 1949, pp. 46-56.

"Judicial Draftsmanship," by Charles A. Beardsley. Washington Law Review and State Bar Journal, May, 1949, pp. 146-153.

"Stare Decisis," by William O. Douglas. The Record of the Association of the Bar of the City of New York, May, 1949, pp. 152-179. (Eighth annual Cardozo Lecture.)

"New Frontiers in Legal Education," by Maynard E. Pirsig. The Hennepin Lawyer, April, 1949, pp. 115-120.

"A Trial Judge's Suggestions on Appellate Court Opinions," by Norwin D. Houser. Journal of the Missouri Bar, May, 1949, pp. 67-68.

"America's Legal Ten Commandments," by Albert Brick. Los Angeles Bar Bulletin, June, 1949, pp. 291-3, reprinted from The Missouri Bar, September, 1947.

"The Significance of the English Legal Aid Plan," by Reginald Heber Smith. American Bar Association Journal, June, 1949, pp. 453-456, 526-528.

"The Supreme Court's Control over State and Federal Criminal Juries," by Austin W. Scott, Jr. Iowa Law Review, May, 1949, pp. 577-604.

"Iowa Judges and the Juvenile Court," by F. James Davis. Iowa Law Review, May, 1949, pp. 634-646.

"The Advisory Opinion in North Carolina," by Preston W. Edsall. North Carolina Law Review, April, 1949, pp. 297-344.

"A Solution for Our Divorce Muddle," by Thomas F. Walker. American Bar Association Journal, June, 1949, pp. 457-460.

"Some Legal Implications of Divorce as a Social Problem," by Harold I. O'Brien. Proceedings, Vermont Bar Association, 1948, pp. 9-22.

"A Lawyer Looks at the Law Schools," by George D. Hornstein. Journal of Legal Education, Summer, 1949, pp. 516-539.

"Legal Aid, the Lawyer and the Community," by Orison S. Marden. Michigan State Bar Journal, July, 1949, pp. 28-31.

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It was the boast of Augustus that he found Rome of brick and left it of marble—but how much nobler will be our Sovereign's boast when he shall have it to say, that he found the law dear and left it cheap; found it a sealed book, left it a living letter; found it the patrimony of the rich, left it the inheritance of the poor; found it the two-edged sword of craft and oppression, left it the staff of honesty and the shield of innocence.—*Lord Brougham*